

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Denial of a
License to Serene Kay French to
Provide Adult Foster Care

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on March 9, 1994, in the conference room of the Brainerd Public Library, Brainerd, Minnesota. The record closed upon adjournment of the hearing that day.

Serene Kay French (Applicant), P.O. Box 203, Pequot Lakes, Minnesota 56472, appeared without counsel. Dominique Willard, Assistant Crow Wing County Attorney, Courthouse, Brainerd, Minnesota 56401, appeared on behalf of Crow Wing County Social Services (the County) and the Minnesota Department of Human Services (DHS).

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Maria R. Gomez, Commissioner, Department of Human Services, 444 Lafayette Road No., St. Paul, Minnesota 55155 (612-296-2701), to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

1. Whether Applicant's decision not to proceed with the installation of larger windows to meet the requirements for emergency egress until it appeared that the license would otherwise be issued is grounds to deny the license under Minn. R. 9555.6125, subp. 2.

2. Whether Applicant's plan to use the three upstairs bedrooms of her

home for residents and to move her ten year-old daughter out of one of those bedrooms creates a "concern" regarding strength and weaknesses of household relationships and constitutes a violation of Minn. R. 9555.6125, subp. 3B.

3. Whether the issue of Applicant's training and ability is properly an issue in this matter.

4. Whether Applicant lacks the training and ability to provide adult foster care and, in particular, corporate foster care using a "shift staff" model.

Based upon the record herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Applicant is an employee of the Brainerd Regional Human Services Center where she has been employed since 1981. The Center was previously known as the Brainerd Regional Treatment Center and will be referred to herein as the RTC. Over that time she has held the positions of human Services Technician, Human Services Specialist-Behavior Modification and Mental Retardation Lead Worker. At the RTC she has gained 13 years of experience working with individuals with mental retardation, seven years of that working with the medically fragile and five of that with difficult behaviors. She presently does the in-service training at the RTC on all aspects of the care and treatment provided there.

2. Applicant received a B.A. Degree in May 1993 from Concordia College in St. Paul in Organizational Management and Communication. She completed that degree by taking classes once a week in St. Cloud over a period of three years. Applicant is certified in first aid/CPR, medication administration and therapeutic intervention. She is licensed as a chauffeur and trained in behavior modification administration.

1 Applicant also claims to have obtained QMRP status. Ex. 2. At the hearing, she stated that she had been informed that a QMRP was a person who has had at least one year of experience working with people with mental retardation and a four-year degree in a behavioral field and that her degree in Organizational Management and Communication fits within that category. Under the federal regulations governing provision of services for persons with mental retardation, a Qualified Mental Retardation Professional is a person who has at least one year of experience working directly with persons with mental retardation or other developmental disabilities and is a Doctor of

Medicine or Osteopathy, a Registered Nurse or a person holding a Bachelors

Degree in one of the following professional categories: Occupational Therapy,

Physical Therapy, Psychologist, Social Worker, Speech Language Pathologist or Audiologist, Recreation, Art, Dance, Physical Education, Dietetics, and human services fields including, but not limited to, Sociology, Special Education, Rehabilitation Counseling and Psychology. 42 C.F.R., 483.430. Applicant's degree doesn't seem to fall within the many areas listed, but she may have an interpretation saying it does.

3. For the last several months, Applicant has also been working as the nutrition site manager at Sibley Terrace, a senior apartment complex in Pequot Lakes. Prior to 1991, she was a co-owner of and bookkeeper for her former husband's body shop in Pequot Lakes. Ex. 2.

4. Applicant's marriage to her former husband was dissolved in a Judgment and Decree dated April 4, 1991. The couple have one child, a daughter born July 9, 1983, and now ten years old. Applicant and her former husband were awarded joint legal and physical custody of the child. The Judgment and Decree noted that at that time the child was spending afternoons and evenings with her father and the night and mornings before school with Applicant. The Judgment and Decree stated that the parties anticipated that the needs of the child may dictate different arrangements for her physical residence from time to time. The parties agreed and the Judgment and Decree ordered that if any dispute arose regarding arrangements for the child's physical residence, the parties would consult with a child psychologist who would advise them as to arrangements in the best interests of the child. No disputes have arisen; Applicant and her former husband have a cordial relationship regarding their daughter's living arrangements.

5. Applicant continues to work the 1:00 to 9:30 shift at the RTC and, therefore, the same living arrangements have continued for her daughter. Applicant picks her daughter up from her former husband's home after 9:30 each evening and gets her off to school in the morning. Thus, they have a very limited amount of time with each other.

6. Applicant became interested in providing adult foster care for one resident. On July 7, 1992, she inquired of the County regarding adult foster care and the County opened a case file on that date to begin the adult foster home study. Applicant met with licensing worker Duane Golden at that time. She met with him again on August 14, 1992, and on September 2, 1992. She signed an application form on September 17, 1992.

7. At the hearing, Golden described the licensing process as one that can take a number of months and one that allows the County to get to know the applicant well enough to determine whether the applicant can adequately provide adult foster care and allows the applicant to learn the requirements and to decide whether to proceed with licensing.

8. On September 2, 1992, the County requested a State Fire Marshall inspection of Applicant's home. The inspection was made on October 16, 1992,

by Robert Leger of the State Fire Marshall Division of the Department of Public Safety. In his exit interview, Ex. 4, Leger noted that he was doing an inspection for an adult foster care with three proposed beds and listed eight items to be completed "prior to occupancy". They included providing a fire extinguisher for the kitchen, sheathing the garage wall with 5/8" gypsum material, posting a written escape plan for each client, planning and conducting quarterly fire drills, providing an emergency device to open the bathroom doors in case of emergency, providing a second means of escape for the client bedrooms, correcting electrical deficiencies in the garage and providing batteries for the smoke detectors. With regard to the second means of escape from the sleeping rooms, the requirement is usually met by having a window that is large enough to allow escape. That requires an open area of 5.7 sq. ft. as stated on the exit interview form. Leger also noted that adult

foster care clients must not use the basement.

9. On November 24, 1992, Susan Mezzenga of the County, conducted an informational meeting for persons interested in providing family foster care for individuals with developmental disabilities who were residents of the RTC. Ex. 3. This was part of a DHS demonstration project to place RTC residents in community settings. The program was particularly targeted at finding former employees of the RTC to be the providers.

10. Because most of the residents being discharged from the RTC are those with more difficult behavior problems and care needs, it is necessary that many of them be placed in what was referred to at the hearing as "corporate foster care" placements. These are four-bed residences using a "shift-staff model" with employed caretakers providing around-the-clock care and, often, 24-hour "awake" staff. In contrast, the traditional family foster care operation is conducted in the home of the licensee and the licensee provides all the care required for the residents with some occasional help. In addition to obtaining the standard family foster care license, a provider of corporate foster care is usually required to be licensed under "Rule 42" (Minn. R. 9525.2000-.2140) as a provider of residential-based habilitation services for persons with mental retardation or related conditions.

11. Most of the residents discharged from the RTC are not residents of Crow Wing County and are the financial responsibility, generally, of their home counties. When such residents are placed in family foster care residences within Crow Wing County it is necessary that Crow Wing County agree to the placement. This is known as "host county concurrence" and is required by Minn. Stat. 256B.092, subd. 8a.

12. Applicant attended the County's orientation session on November 16, 1992. At that time, Applicant had some interest in the program and some interest in providing adult foster care for one particular resident of the RTC who was a resident of Hennepin County. At that meeting, or perhaps in other discussions, Mezzenga provided information to Applicant regarding Rule 42 licensure and informed her of the need to work with the Hennepin County case worker for the resident.

13. On December 3, 1992, Golden made a home visit to inspect Applicant's house for compliance with the rules. There is no claim by the County that there were any compliance issues found at that inspection. Applicant and Golden did have some discussion regarding the size of the window openings required by the Fire Marshall. He suggested moving some hardware on the windows to increase the size of the opening. She did that, along with correcting all the other items on the Fire Marshall's list that could be corrected prior to the actual placement of a resident.

14. Applicant contacted Hennepin County regarding doing foster care for the resident of the RTC. The Hennepin County worker, Shirley Lillienkrantz, advised Mezzenga that she had been contacted and would be coming to Brainerd at some point to review the case to determine if the resident could be placed in family foster care. Over the next several months, Mezzenga received several calls from Applicant who often expressed frustration with the slowness

of the process.

15. On March 26, 1993, the Fire Marshall conducted another site visit to review the egress window size for the adult foster care sleeping rooms. on that day, Leger informed Applicant, and reported on his exit interview, that the clear opening was 41" wide and 21 1/2" high (6.1 sq. ft.), but that the minimum height must be 24". He noted that all other items of concern had been corrected and required that he be notified by letter stating the details of the egress window correction. Ex. 4.

16. Applicant knew a number of other people from the RTC that were providing family foster care and was aware of some who had gone to the expense of making required physical improvements to their homes only to have their licenses denied. Thus, she was reluctant to spend the money to have the windows remodeled until she had some assurance that there were no other problems in obtaining the license. She informed Golden of this and on March 31, 1993, he wrote to Hennepin County stating:

The adult foster home study of Serene French is almost complete. There is only one item left for her to do and that is to install an Egress size window in the bedroom where the resident will reside. She is waiting to learn if she is going to get somebody to care for, she will then install the window and we can complete the home study and issue the adult foster home license. She is hesitant to put out the expense for the window until she finds out if she is going to get someone.

Ex . 4

17. On June 9, 1993, Lillienkrantz completed her screening assessment of the resident and determined that the needs and behaviors of the resident required that she be placed in an SLS with a shift staff model with one awake night staff, two staff during daytime hours and a third staff on call with short response time. Ex. 5.

18. Applicant was disappointed with Lillienkrantz's assessment. However, Lillienkrantz had asked Applicant about providing a four-bed shift staff model, as had the RTC resident ombudsman. Applicant was also in regular contact with other people who were providing adult foster care with a shift staff model and knew some of the requirements and problems of doing so. She began considering operating such a residence.

19. Applicant had a subsequent discussion with Mezzenga and told Mezzenga something to the effect of "If they want a shift staff model, then I'll take four residents instead of one." That "concerned" Mezzenga because of the differences between family foster care and a shift staff model and that Applicant would "leap" into providing that service. Her concerns arise out of her view that corporate foster care is a very complicated process of starting

up a business and dealing with all the financing, personnel, security and training issues involved in running a business. Her experience with former employees of the RTC is that while they have years of experience of dealing with individuals with developmental disabilities, they don't appreciate the business aspects of operating a corporate foster care operation. Mezzenga was aware that Applicant worked at the RTC in some program dealing with individuals with developmental disabilities, but was not sure of what

Applicant's job was.

20. Applicant decided to pursue a shift staff model. She estimated her staffing needs at 202 hours per week in addition to herself. That provided for two positions working weekday evenings from 4:00 p.m. to 10:00, two positions working weekend days from 8:00 a.m. to 4:00 p.m. , two positions working weekend evenings from 4:00 p.m. to 10:00 p.m. and one awake night position working every night from 10:00 p.m. to 8:00 a.m. Based on discussions with an accountant, she estimated the payroll and benefits costs at \$10.00 per hour, which totaled over \$8,000.00 per month. Ex. 5, p. 3. Applicant planned for no staff other than herself weekdays from 8:00 a.m. to 4:00 p.m. During weekdays, the residents are usually at a DAC from 7:00 a.m. to 3:30 p.m. and not present in the home. Applicant talked with the Pine River DAC, which is about ten miles north of her home, and they were willing to take additional clients and had space available.

21. In order to provide corporate foster care, Applicant would have to resign her position at the RTC and devote full time to adult foster care. The principal advantage to Applicant of doing so and a primary reason for her pursuing the necessary licenses was that it will allow her to have more time with her daughter. Applicant would be at home all the time and her daughter's schedule could be rearranged so that she would come to Applicant's home after school rather than going to her father's.

22. In order to have four residents, it was necessary that the residents use the three bedrooms on the second floor of the house because they are prohibited by the fire code from being in the basement. Applicant planned that she would move her own bedroom into the partially-finished basement. Likewise, her daughter would have to move out of her bedroom and sleep with Applicant in the basement bedroom or sleep at her father's home. Applicant's daughter has her own bedroom at her father's and it would be her choice, as it is now, as to where she wanted to sleep. Applicant's daughter was very happy with and excited about the possibility of her mother being home full time operating an adult foster care home. Due to Applicant's job, her daughter is quite familiar with people with developmental disabilities and the fact that there would be four such persons in the home presents no particular problem in relation to Applicant's daughter.

23. Leaving her full-time job and its benefits will be a serious undertaking for Applicant. To make it viable, she needs to have four residents; three residents would be financially risky for her. With the assistance of a small business group at Brainerd Technical College, Applicant has prepared a business plan for the operation. She has approximately \$20,000 available to put it into operation and sustain her financially for some period. She also took on the additional job as Nutrition Site Manager at Sibley Terrace to gain additional business experience.

24. Applicant obtained recommendations from staff at the Regional Treatment Center as to residents who would be candidates for placement in a residential facility and sent proposals to the eight counties of

responsibility of those persons.

25. There were a number of telephone discussions between Applicant and Golden, Mezzenga and other County personnel during the summer of 1993.

Applicant informed Mezzenga that she was investigating bringing four persons into her home who were residents of other counties, but Mezzenga had had no requests at that point for host county concurrence or any other correspondence. She felt that Applicant was again frustrated by the slowness of the process and didn't seem to understand it.

26. Later that summer, Applicant received a call from the ombudsman asking if she would be able to take a person with traumatic brain injury. Applicant indicated she might be willing to do so. The ombudsman, who was putting pressure on the RTC and County to place the resident outside of the RTC, contacted the County and indicated that Applicant had indicated she might be willing to take the resident in adult foster care. However, this was an extremely difficult client who had previously failed placement in a highly-structured corporate foster care residence and the County felt she was inappropriate for any form of foster care. In talking to the County about this resident, Applicant suggested some possible methods of controlling her behavior such as using a baby monitor, fencing the yard and attending weight watchers together, all of the County considered totally inadequate and which they felt demonstrated a lack of judgment and lack of ability to deliver effective programs on Applicant's part. A County worker was also concerned about Applicant's daughter being exposed to this particular client's sometimes inappropriate sexual behavior. In response, Applicant indicated to the worker that her daughter would be staying with her father more. That created a "concern" for Susan Beck, one of the County's supervisors, because she considered that contrary to their goal of maintaining a "family" in family foster care arrangements.

27. The County denied adult foster care services for the person with traumatic brain injury and that matter was appealed. A hearing was scheduled for October 6, 1993, and, apparently, that appeal is still pending. Ex. 8.

28. On September 21, 1993, Applicant received a letter from Ramsey County Human Services Department addressed to "To Whom it May Concern" stating that they were working to complete arrangements for Applicant to provide services to one of their clients who was presently at the RTC. It also stated that Applicant would service four developmentally disabled clients in a community-based home in Pequot Lakes with proposed day care activities to be provided in the Pine River DAC, that the placement met their requirements and that they were looking forward to placing their client with Applicant. Ex. 5A. Another social worker informed Applicant verbally that they tentatively approved placement of their client with Applicant.

29. Golden, in discussions with Mezzenga and Beck, learned of their concerns about the ability of Applicant to deal with specific clients. Mezzenga was upset with Applicant's failure to follow the host county

concurrency procedures, although it was not specified at the hearing what procedures Applicant failed to follow. Golden, through his conversations with Applicant, was concerned that she seemed to be "almost panicked" about getting the four residents she would need in order to make her operation viable. When he learned that Applicant was, as he understood it, planning to have her daughter live with her father and did not consider it significant to move the daughter out of her own room, it struck him as odd. In his view, teenagers need their own room. He also thought that that would make the setting less family-like, contrary to the purpose of family foster care.

30. Applicant and her daughter talked with her daughter's social worker about the idea of Applicant quitting her job and operating a family foster care home. Her daughter had had weekly contact with the social worker for three years in accordance with the school's policy that provided that service to children from divorced families. The social worker had discussed the matter in detail with Applicant's daughter and was of the opinion that the arrangement would benefit both the daughter and Applicant greatly and would allow Applicant to provide more structure and security for her daughter. The social worker was of the opinion that Applicant had always taken her daughter's feelings and well-being into consideration. Ex. 7.

31. On October 4, two days before the hearing regarding the person with traumatic brain injury at which Applicant was to be a witness, Golden called Applicant into his office. He told her of his "concerns". Applicant felt that Golden was very vague. He mentioned the needs of her daughter and she explained that she, her daughter and the school social worker all agreed that it was in her daughter's best interest. She later provided him with a October 6, 1993 letter from the social worker regarding the matter. Ex. 7.

32. On October 25, 1993, Golden wrote the Commission of DHS giving the County's recommendation that Applicant's adult foster home application be denied. Exs. I and 9. The letter cited Minn. R. 9555.6125, subp. 2, regarding fire inspections and stated that the Fire Marshall's requirement for a second means of escape from the sleeping rooms on the upper level had not been corrected. It noted that Applicant stated that she did not want to go to the expense of installing windows unless she was approved for placement of specific residents in her home. The recommendation then cited Minn. R. 9555.6125, subp. 3B, and described the County's "concerns" about Applicant's ability and competency in making case plans for the type of individual needing foster care, that she seemed in a hurry to get residents before only the most difficult ones were left at the RTC and that she felt the need to have four residents so that she could quit her job at the RTC. It described what were called her steps to have the person with traumatic brain injury approved for

placement in her home as being an example of her unrealistic assessment of the person's needs and her ability to comprehend the requirements for that person to be placed successfully in the community. The letter stated that Applicant did not follow proper procedures in obtaining host county concurrence and again questioned her judgment and assessment of resident's needs and ability to put together the elements of appropriate programs for clients. It also expressed their concern about what it described as her statement that in order to have space in the home for four residents, Applicant would have to move her daughter out of the home and let her live with her father. They felt that that statement was made without due regard to the feelings and needs of the daughter and that Applicant was putting the needs of the residents ahead of her relationship with her daughter. The letter concluded that the County felt that the needs of the residents took precedence over Applicant's desire to do foster care and that the residents' needs would not be met adequately in the home.

33. On October 16, 1993, the Director of Licensing of DHS denied the application based upon the County's recommendation. The denial cited Minn. R. 9555.6125, subp. 2, regarding fire inspections and described the violation as the failure to install the larger windows. It also cited Minn. R. 9555.6125,

subp. 3B, regarding providing social history information and described the facts of the violation as follows:

Due to a statement made regarding your nine year-old child, the strengths and weaknesses of household relationships are a concern. You indicated that in order to have four residents in your home, you would have to move your daughter out of the home and let her live with her father. This statement was made without apparent regards [sic] to the best interest or feelings and needs of your daughter.

The denial did not cite any grounds relating to Applicant's ability to provide family foster care or any of the other reasons the County had put in its recommendation regarding Applicant's ability and competency or failure to follow improper procedures.

34. By letter of December 1, 1993, received by DHS on December 7, 1993, Applicant appealed the denial. DHS then sent the County an appeal packet, including the form Notice of and Order for Hearing along with instructions on completing the form and arranging for the hearing. The Notice of and Order for Hearing form requires that an Exhibit A be attached setting forth the issues to be considered at the hearing. The instructions make it clear that an Exhibit A must be included with the Notice of and Order for Hearing served upon the appellant. The Notice of and Order for Hearing served by the County upon Applicant and filed with the Administrative Law Judge did not have an Exhibit A attached,

35. At the beginning of the hearing, the Administrative Law Judge noted that no Exhibit A, setting forth the issues to be considered, had been included with the Notice of and Order for Hearing. However, Applicant indicated that she desired to proceed with the hearing. The County argued that there were three grounds for denial of the license in this matter: The failure to install an adequate egress window in violation of Minn. R. 9555.6125, subp. 2, the County's concerns regarding moving Applicant's daughter out of the house in violation of Minn. R. 9555.6125, subp. 3, and the County's concerns regarding Applicant's training and ability to provide care in violation of Minn. R. 9555.6125, subp. 3. Applicant did not object at that point, but later, during her own testimony, indicated that the only two issues that she had notice of were the first two, which had been stated in the DHS denial.

36. Applicant indicated at the hearing that she still desires to provide

family foster care for four residents with a shift staff model and to do so on a long-term basis. She admitted that it was unrealistic for her to consider providing care for the person with traumatic brain injury, but stated that she was under some pressure from the ombudsman to do so and didn't know how to say no at the time. She did apply for a Rule 42 license, but that was returned pending the outcome of this proceeding. Applicant will have the windows remodeled if it appears that she is going to obtain the foster care and Rule 42 licenses. Meanwhile, she is looking to buy another house that will provide better facilities for the residents and for herself and daughter. If she purchases another home, she will do whatever is required to make it comply with all requirements.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over the subject matter of this hearing pursuant to Minn. Stat. 14.57, 245A.05 and 245A.08.

2. The definitions in Minn. R. 9555.5105 and the substantive provisions of Minn. R. 9555.6105 to 9555.6265 govern the licensure of operators of adult foster homes. Regarding negative licensing actions, which include denials of applications for licensure, Minn. R. 9555.6145, subd. 2, provides, in relevant part

Procedures. In accordance with Minnesota Statutes, section 245A.08, failure to comply with parts 9555.5105 and 9555.6105 to 9555.6265 or the terms of licensure is grounds for a negative licensing action. If the local agency recommends a negative licensing action, the local agency shall notify the department and the department shall determine if the standards in parts 9555.5105 and 9555.6105 to 9555.6265 or the terms of licensure have been violated. If the grounds are sufficient, the commissioner shall follow the procedures in Minnesota Statutes, section 245A.08, and notify the applicant or operator by certified mail, unless personal service is required by subpart 7.

3. The Rules of the Office of Administrative Hearings state that a Notice of and Order for Hearing in a contested case must contain a statement of the allegations or issues to be determined together with a citation to the relevant statutes or rules allegedly violated. Minn. R. 1400.5600, subp. 2D.

In Human Services license hearings, DHS provides the county agencies with a form Notice of and Order for Hearing to which an Exhibit A is to be attached specifying the issues to be considered. That was not done in this case and the notice was therefore defective. However, Applicant waived that requirement at the hearing and requested that the hearing proceed.

4. The issues to be determined at this hearing are those set forth in the DHS letter of November 16, 1993, denying Applicant's application. In the absence of Exhibit A, it is the only statement of the issues. Moreover, under Minn. R. 9555.6145, subp. 2, cited above, it is DHS that determines, based upon the local agency's recommendation, what rules or terms of licensure have been violated. DHS's determination of alleged violations was set forth in its letter of November 16, 1993.

5. Minn. R. 9555.6125, subp. 2, provides, in relevant part:

The residence must be inspected by a fire marshall within 12 months before initial licensure to verify that the residence is a dwelling unit within a residential occupancy as defined in 9.117 of the Minnesota Uniform

Fire Code and that the residence complies with the fire safety standards for that residential occupancy contained in the Minnesota Uniform Fire Code Any condition cited by the fire marshal, building official, or health authority as hazardous or creating an immediate danger of fire or threat to health and safety must be corrected before a license is issued or renewed by the department.

6. The windows in the sleeping rooms that would be used as resident bedrooms in Applicant's home need to be enlarged to comply with size requirements for an alternative means of egress under the Minnesota Uniform Fire Code. Applicant cannot be issued a license until the windows are enlarged and approved by the Fire Marshall. But that does not constitute grounds for denying the license, at least on its own. Applicant has not refused to make the correction, she quite reasonably seeks to delay making that expenditure until she has some assurance that she will be licensed. Golden clearly recognized that in his earlier correspondence to Hennepin County stating that the only item remaining was remodeling the windows before a license was issued. Applicant is presently looking for a new house that would provide a better physical arrangement for providing care for four residents using a shift staff model. In her particular case, it is necessary that several things come together at one time so that she can leave her full-time job and begin the business of operating an adult foster care home. She needs to have the adult foster care license and the Rule 42 license in place or ready to be issued and she needs to have three or four residents arranged to make the business viable. She complied with all the less expensive requirements of the Fire Marshall and stands ready to enlarge the windows before being licensed. Clearly, a provisional license under Minn. R. 9555.6125, subp. 8, could be granted that required compliance with the Fire Marshall's Order and verification of compliance by the Fire Marshall prior to placement of any resident. Denying a license where the Applicant will proceed with the expensive remodeling at a reasonable time before residents are placed is unreasonable.

7. Minn. R. 9555.6125, subp. 3, requires that a study of applicants be conducted as described in the four subparts of the rule. Subp. B provides:

The applicant who is an individual shall provide social history information to the commissioner about each household member. "Social history information" means information on education; employment; financial conditions; military service; marital history; strengths and weaknesses of household relationships; mental illness; chemical dependency; hospitalization; involuntary terminations of parental rights; the use of mental retardation services; felony, gross misdemeanor or misdemeanor convictions, arrests or admissions, and

substantiate any reports of neglect or abuse.

This subpart deals with the information to be provided by individual applicants whereas subp. C lists the information that is to be provided by applicants that are business organizations or governmental units.

8. Applicant's statements to County personnel regarding movement of her daughter to accommodate four residents do not violate Minn. R. 9555.6125, subp. 3B, for the following reasons:

a. The cited rule does not state any qualification standards, it only requires an individual applicant to submit social history information. This provision can only be violated by an applicant failing to disclose the required information. There is no allegation that that occurred in this matter.

b. DHS and the County were wrong in their understanding of and the implications of Applicant desiring to move her daughter out of her own bedroom to make room for the residents. Applicant does not want to move her daughter out of the home and let her live with her father. The opposite is true. Applicant's proposal would allow Applicant's daughter to be in the home more during the after-school and evening periods when Applicant would also be there. Applicant's daughter would have the option of spending the night with Applicant or in her bedroom at her father's home two blocks away. Clearly, the arrangement was desired by Applicant's daughter and would create a more home-like environment in Applicant's home for any residents who were present. The school social worker who had extensive contact with Applicant and her daughter felt strongly that such an arrangement would be very positive for Applicant's daughter. Golden didn't consider that opinion. Instead, Golden relied on his personal opinion that teenagers need their own room. Golden's opinion is highly questionable.

Children

and teenagers are quite willing to adapt and make changes, especially when they have been consulted, know that the changes are being made for their benefit and agree with them. Moreover, this child has a bedroom at her father's house. Applicant had her daughter's feelings utmost in her mind. Operating a corporate foster care residence will have the very desirable side effect of enhancing household relationships for Applicant, her daughter and any residents.

9. The issue of whether Applicant's license should be denied because of concerns regarding her training and ability is not a proper issue in this matter. It is not a basis upon which DHS denied Applicant's license and it was not an issue cited in the Notice of Hearing.

10. Even if the concern of the County regarding Applicant's training and ability were a proper issue in this matter, it would not be a grounds for denying her a license based upon the facts presented at the hearing. As discussed above, the rule cited by the County, Minn. R. 9555.6125, subp. 3B, is not a rule that sets any standards for qualifications of the Applicant; it

merely requires the Applicant to provide "social history information". Thus , there was no violation of that rule. The qualifications required of adult foster care providers are set out in Minn. R. 9555.6125, subp. 4. The

qualifications listed require operators and care givers to be adults, to be free of communicable disease, to disclose any criminal history, not to have been convicted of abuse or neglect or a number of other specified crimes, not have had parental rights terminated, not be mentally retarded or have a mental

illness that would jeopardize the health, rights or safety of the residents and not abuse prescription drugs or controlled substances or alcohol to the extent of having a negative effect on the health, rights or safety of the residents. Applicant meets all those qualifications.

11. The only provision in the rules that allows an evaluation of an applicant's ability to provide care is Minn. R. 9555.6125, subp. 5. That subpart provides:

The commissioner may require, before licensure or any time during the license term of the adult foster home, a physical, mental health, chemical dependency, or criminal history evaluation of the operator, care giver, or household member if the commissioner has reasonable cause to believe that any of the qualifications or requirements of items A to I have not been met or that the operator or any care giver cannot care for the resident. Evaluations must be conducted by a professional qualified by licensure, certification, education, or training to perform the specific evaluation. (Emphasis added.)

The County's "concerns" about Applicant's training and ability are vague and nonspecific and cannot be related to any existing standard in the rules governing licensure of adult foster homes, Minn. R. 9555.5105 and 9555.6105 to 9555.6265. No professional has conducted an evaluation and determined that Applicant cannot care for residents she may have. A license cannot be denied because of vague "concerns". It must be related to some standard specified in law or rule. There is no evidence in this matter of Applicant failing to comply with any statute or rule.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Human Services issue Applicant a provisional adult foster home license conditioned upon Applicant enlarging the windows of the residents' sleeping rooms as require by the Fire Marshall prior to the placement of any residents in the home.

Dated this 5th day of April, 1994.

STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped, not transcribed.
Two tapes, Nos. 20,438 and 20,408

MEMORANDUM

The reasons given by the County for denying the application in this case were very vague, subjective and seemed to be based upon a misinterpretation of the facts. Clearly, some of the County people have "concerns" about Applicant's ability to provide care. But the justifications they presented at the hearing for their concerns were not at all convincing. There are appears to be an undercurrent of animosity or mistrust between Applicant and some of the County staff. It appears quite possible that Applicant has been unsure of her plans and sometimes frustrated with the County and they have been frustrated with her. It also appears quite possible that the County staff has been vague with their instructions and subjective with their judgments. After attending the hearing and listening to the tapes of the hearing, the Administrative Law Judge is still unable to understand what Mezzenga considers to be the proper procedure for securing host county concurrence. At various points the County criticized Applicant for not appreciating the business aspects of operating a corporate foster care home and at other points they criticized her for emphasizing the financial requirements to make the operation viable. At any rate, licensing must be done by the statutes and rules and fairly administered. Applicant currently appears to have adequate business experience, adequate finances, the necessary determination and sufficient experience in providing care to people with developmental disabilities to properly operate a shift staff model adult foster home. It appears that communications between Applicant and County staff need to be improved and they need to work together better. The County cut off this licensing process too soon. It should proceed. Hopefully, the County can make reasonable and fair decisions regarding the Rule 42 license and cooperate in the placement of residents who will benefit from Applicant's operation. Hopefully, Applicant will better understand the needs of County to ensure the safe and appropriate care of any residents and to be involved at all times in the entire process.

SMM

